UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/1994/43
8 April 1994

ORIGINAL: ENGLISH

Substantive session of 1994
27 June-29 July 1994
Item 6 (a) of the provisional agenda*

ECONOMIC AND ENVIRONMENTAL QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS

Sustainable development

Note by the Secretary-General

1. In resolution 48/55, the General Assembly invited the General Agreement on Tariffs and Trade (GATT) and requested the United Nations Conference on Trade and Development (UNCTAD), in accordance with their respective mandates and competencies and in close cooperation with other competent United Nations bodies and the regional commissions, to address trade and environmental matters comprehensively, and to submit, through the Commission on Sustainable Development, a report thereon to the Economic and Social Council at its substantive session of 1994.

2. The Secretary-General has the honour to transmit to the Council the annexed report, submitted by the GATT secretariat.

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Annex

NOTE BY THE GATT SECRETARIAT
PREPARED FOR THE SECOND MEETING OF THE COMMISSION
ON SUSTAINABLE DEVELOPMENT
16-31 MAY 1994

1. This note is submitted to the Secretariat of the Commission on Sustainable Development (CSD) by the GATT Secretariat on its own responsibility. It is in response to a request to the Director-General by the Under-Secretary-General of the United Nations Department for Policy Coordination and Sustainable Development for a report from GATT on its ongoing and future activities related to trade and the environment. It relates to the decision taken at the first meeting of the CSD that the Economic and Social Council of the United Nations would invite relevant organizations of the UN system to prepare specific reports on their activities to follow up the UNCED, focusing on ongoing and future projects and initiatives related to the multi-year thematic programme of work.

2. This note also responds to the invitation extended by the General Assembly at its 48th Session (contained in draft resolution A/C.2/48/L.57, 1 December 1993) for the GATT "to address comprehensively trade and environmental matters, and to submit, through the Commission on Sustainable Development, a report on this subject to the Economic and Social Council at its substantive session of 1994".

EXECUTIVE SUMMARY

3. GATT contracting parties believe that the successful conclusion of the Uruguay Round was an important step towards creating the conditions for sustainable development. Trade liberalization and the maintenance of an open, non-discriminatory trading system are key elements of the follow-up to UNCED.

4. Much work has already been undertaken in GATT on trade and environment, both in the Group on Environmental Measures and International Trade and in the Committee on Trade and Development, which can be considered follow-up to UNCED. These discussions have contributed to the deepening of knowledge of the interlinkages between trade and environment.

5. The Decision of the Trade Negotiations Committee of 15 December 1993 to draw up a new, comprehensive work programme on trade and environment reflects the continuing determination of the CONTRACTING PARTIES that GATT play its full part in ensuring that policies in the fields of trade, environment and sustainable development are compatible and mutually supportive.

6. The contracting parties welcome the initiative of the Director-General of GATT to host a public symposium in early summer on the subject of trade, environment and sustainable development. This symposium can contribute to increasing awareness of the discussions in GATT

on this issue and help parties to promote a dialogue between trade, development and environment communities.

Conclusion of the Uruguay Round of Trade Negotiations

7. The most significant activity has been the successful completion of the Uruguay Round of trade negotiations, the results of which were adopted by the Trade Negotiations Committee on 15 December 1993. This responds directly to the UNCED recommendation, contained in paragraph 2.10(e) in Section A of Chapter 2 of Agenda 21, which states, "... the international community should: ... strengthen the international trade policies system through an early, balanced, comprehensive and successful outcome of the Uruguay Round of multilateral trade negotiations".

8. Successful completion of the Uruguay Round advances the four objectives for promoting sustainable development through trade contained in paragraph 2.9 (a) - (d) in Section A of Chapter 2 of Agenda 21. These objectives are:

(a) to promote an open, non-discriminatory and equitable multilateral trading system that will enable all countries - in particular, the developing countries - to improve their economic structures and improve the standard of living of their populations through sustained economic development;

(b) to improve access to markets for exports of developing countries;

(c) to improve the functioning of commodity markets and achieve sound, compatible and consistent commodity policies at national and international levels with a view to optimising the contribution of the commodity sector to sustainable development taking into account environmental considerations;

(d) to promote and support policies, domestic and international, that make economic growth and environmental protection mutually supportive.

9. The conclusion of the Uruguay Round represents an achievement in multilateral policy coordination, and should help to raise expectations of similar successes in the environmental field. The multilateral trade agreements promise to enhance trade and development opportunities which will, in turn, respond to many sustainable development concerns by bringing into effect broad reform of trade and trade-related policies and an increase in market access for trade in goods and services. It will help to improve allocative efficiency, stimulate technological progress and productivity growth, and raise incomes around the world.

10. For developing countries, where poverty is the number one policy preoccupation and the most important obstacle to better environmental protection, global trade liberalization, coupled with financial and technological transfers, is essential for promoting sustainable development. Export earnings are a primary source of foreign exchange for these countries. Export opportunities will be enhanced through the Uruguay Round package both through the reduction of tariffs and of tariff escalation and removal of non-tariff barriers in their main trading partners, and in specific areas such as textiles and clothing. This can make a real contribution to reducing dependence on natural resource-based activities, and assist developing countries in moving factors of production into other activities that are less environment-intensive and produce higher value-added.

11. The GATT secretariat has estimated that the overall trade impact of the Uruguay Round is that the level of world merchandise trade will be about 12 per cent higher in the year 2005, an

increase of roughly $745 billion (in 1992 dollars), over the level that would exist if trade grew annually at its average for the period 1980-91 (4.1 per cent). The largest increases in trade are projected to occur in clothing (60 per cent), textiles (34 per cent), agricultural, forestry, and fishery products (20 per cent), and processed food and beverages (19 per cent), which are areas of export interest to many developing countries.

12. Although the relationship between trade measures and environmental measures was not included as a separate subject for negotiation in the Round, environmental concerns have been picked up explicitly in a number of the multilateral trade agreements. These are described below.

13. The Agreement Establishing the World Trade Organization (WTO) envisages a single institutional framework for the multilateral trading system encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices, and the complete results of the Uruguay Round negotiations. The Preamble to the Agreement includes, for the first time in the context of the multilateral trading system, reference to the objective of sustainable development and to the need to protect and preserve the environment. It states:

> "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development;"

14. The Agreement on Technical Barriers to Trade (TBT) aims to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade. In that context, however, it recognizes that each country should not be prevented from taking measures necessary to protect human, animal and plant life or health or the environment, and that each country has the right to set the level of protection that it deems appropriate in these areas. The Agreement encourages countries to use international standards where these are available, but it does not require countries to harmonize their domestic regulations and standards upwards or downwards as a result of international standardization activities.

15. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) addresses the variety of measures used by governments to ensure that human and animal food is safe from contaminants, toxins, disease-causing organisms and additives, and measures to protect human health from pests or diseases carried by plants and animals. These measures are not covered by the TBT Agreement. The SPS Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, but where trade restrictions result, these measures should be taken only to the extent necessary for health protection, on the basis of scientific principles and evidence. If there is not sufficient scientific evidence, governments may temporarily impose precautionary restrictions while they seek further information. Governments are to determine the level of health protection they consider to be appropriate on the basis of an evaluation of the risks involved. SPS measures are to be applied in a non-discriminatory manner. Furthermore, if there are a number of measures which could be used to ensure the determined level of health protection, governments are to use those which are no more trade restrictive than necessary to achieve the appropriate level, if these are technically and economically feasible.

16. The Agreement on Agriculture provides for the long-term reform of agricultural trade and domestic policies. It increases market orientation in agricultural trade by providing for commitments in the areas of market access, domestic support and export competition. It will

reduce incentives for intensive farming in areas ill-suited to that activity, and when coupled with appropriate environmental policies, it will enhance the conditions for better environmental protection and the promotion of sustainable development. A significant aspect is the commitment to reduce domestic support for agricultural production, particularly in the form of production-linked agricultural subsidies. The exemptions from the reduction commitments, subject to certain conditions, are contained in Annex 4 of the Agreement; one is for direct payments under environmental programmes.

17. The Agreement on Subsidies and Countervailing Measures, inter alia, identifies non-actionable subsidies on which countervailing duties cannot be applied. Payments of up to 20 per cent of the cost of adaptation of existing facilities to new environmental laws and requirements, subject to certain conditions, will be considered a non-actionable subsidy. The conditions are that the facilities to be adapted must have been in existence for at least two years, the assistance must be of a one-time, non-recurring nature and must be available to all firms that are able to adopt the new equipment or production processes, it must be directly linked and proportionate to a firm's planned reduction of nuisances and pollution and must not cover any manufacturing cost savings that may be achieved, and it must not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms.

18. The Agreement on Trade-Related Intellectual Property Rights (TRIPs) is expected to encourage more research and innovation and better access to new technology, including environmental technology, for all countries. Article 27 of the Agreement defines "Patentable Subject Matter", of which paragraphs 2 and 3 provide for exclusions from patentability, both covering areas that may be of importance in the context of environmental protection. Paragraph 2 provides for the possibility of excluding inventions from patentability if preventing their commercial exploitation is considered necessary to avoid serious prejudice to the environment. Paragraph 3 allows governments to exclude from patentability "plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes". However, Members must provide for the protection of plant varieties by patents or by an effective sui generis system, or a combination thereof.

19. Article XIV of The General Agreement on Trade in Services (GATS) contains the General Exceptions to the Agreement. Modelled after Article XX of the GATT, its sub-paragraph (b) is identical to Article XX(b) of the GATT. The Agreement contains a Ministerial recommendation that a decision be adopted at the first meeting of the Council for Trade in Services to set up a Working Party to examine and report, with recommendations if any, on the relationship between services trade and the environment, including the issue of sustainable development. The Working Party is also to examine the relevance of inter-governmental agreements on the environment and their relationship to the GATS. This work is aimed at determining whether any modification of Article XIV of the GATS is required to take account of measures necessary to protect the environment. The Working Party will report on the results of its work within three years of the entry into force of the WTO.

20. The Understanding on Rules and Procedures Governing the Settlement of Disputes provides for each panel to have the opportunity to seek information and technical advice from any individual or body which it deems appropriate, to seek information from any relevant source, and to consult experts to obtain their opinion on certain aspects of the matter under dispute. This would apply to experts in the field of the environment in the event a dispute involves trade-related environmental measures. A panel may also request an advisory report in writing from an expert review group with respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute. Appendix 3 also allows a party to a dispute to disclose statements of its own position to the public and, at the request of a Member of the WTO, parties to the dispute

shall provide a non-confidential summary of the information contained in their own submissions to the panel that could be disclosed to the public.

UNCED follow-up work in GATT

21. The CONTRACTING PARTIES, at their 48th Session in December 1992, agreed on a way of proceeding in GATT with UNCED follow-up activities in the area of trade. This decision noted that GATT's competence is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for GATT contracting parties. It added that in respect neither of its vocation nor of its competence is the GATT equipped to become involved in the tasks of reviewing national environmental priorities, setting environmental standards or developing global policies on the environment. Nevertheless, the CONTRACTING PARTIES acknowledged that the multilateral trading system does have a central role to play in supporting an open international economic system and fostering economic growth and sustainable development, especially in the developing countries, to help address the problems of environmental degradation and the over-exploitation of natural resources.

22. Therefore, the CONTRACTING PARTIES invited the Committee on Trade and Development to take on board those matters raised by the UNCED in the context of promoting sustainable development through trade liberalization (Agenda 21, Chapter 2: Introduction and Section A); and invited the Group on Environmental Measures and International Trade to take up the matters raised by UNCED with respect to making trade and environment policies mutually supportive (Agenda 21, Chapter 2: Introduction and Section B). It was also noted that the Council of Representatives, in discharging the responsibilities of the CONTRACTING PARTIES between Sessions, is the responsible GATT body for matters relating to inter-institutional and other external relations (Chapter 2.22 (a), (b), (h), and (k) of Agenda 21). It was further recalled that the Council of Representatives had decided to extend the mandate of the Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances for a period of three months, beginning from the date of the Group's next meeting. Finally, it was also agreed that the Council would hold a meeting devoted to UNCED follow-up to review, and as necessary supplement, the UNCED follow-up work underway in GATT. This meeting was held on 22 February 1994.

Agenda 21, Chapter 2, Introduction and Section A

23. The main topics discussed in this context were: (i) the sustainable development, environment and trade interface; (ii) improving market access, in particular to exports of developing countries; (iii) monitoring and data collection; and (iv) the relevance of existing GATT rules relating to developing countries, including Part IV, to the concepts of sustainable development, environment and trade.

24. Discussion revealed that a comprehensive examination of the concept of sustainable development, from the point of view of developing countries, would require a thorough discussion of issues such as: differences in consumption in developed and developing countries and their impact on environment; development needs of developing countries; the link between poverty eradication and environmental goals, and between the latter and access to less-polluting technologies; policies in developed and developing countries to maximize the benefits of trade liberalization for sustainable development; and the relationship between environmental goals, transfer of technology, open markets and financial resources.

25. While the protection of the environment was essential in the case of developing countries, this had to be pursued through, inter alia, access to less-polluting technologies, transfer of know-how to developing countries to prevent them from committing errors similar to those that have occurred in developed countries, and protection of bio-diversity and compensation for those who

preserved it. The importance of ensuring the resources required to protect the environment in developing countries, particularly in the least-developed countries, was especially emphasized.

26. Other delegations underlined UNCED's emphasis on the importance of an appropriate mix of policies in the areas of environment, trade and development to ensure growth - an important part of the solution to environmental degradation. However, UNCED also stressed that eradication of poverty had to be based on a pattern of growth that was sensitive to the environment, otherwise it could not be sustainable. Some delegations, while acknowledging that developing countries might, for a transitional period, apply looser environmental standards, stressed that in the long-run developing countries should gradually seek to undertake fuller responsibilities in the pursuit of global environmental objectives. It would be in the interest of developing countries themselves to shorten the transitional period and adhere to multilateral agreements or apply standards similar to those in developed countries. This would avoid the risk of transferring non-green or polluting industries to developing countries and of additional obstacles being raised to exports of products of lower standards to developed countries.

27. It was also pointed out that the process of examination of Agenda 21 should be based on agreed principles which would orient the discussion in the right direction. Two such principles, it was suggested, are the following: (i) environmental problems without spill-over effect should be left to national authorities; (ii) environmental problems with spill-over effects should be resolved through international or regional cooperation and not through unilateral actions. The need to recognize the different roles of various institutions in regard to UNCED follow-up and to deal with individual issues within the relevant institution was also emphasized.

28. It was generally agreed that the successful conclusion of the Uruguay Round represents the best single contribution GATT could make to sustainable development, as it has the potential to contribute to more efficient allocation of national resources, thus minimizing wastage and pollution. Improving market access to exports of developing countries, especially in areas of particular interest to them, would also encourage economic growth, resulting in more resources for raising national environmental standards. Trade distortions resulting from environmental measures must also be avoided. Discussions also referred to the role of market forces in increasing global efficiency and of complementary governmental measures at national and international levels. It was suggested that in addition to reducing barriers to access in existing markets, consideration be given to the evolution of new markets or market-based solutions to deal with emerging environmental challenges.

29. It was broadly recognized that the existing GATT rules in favour of developing countries, in particular Article XVIII and Part IV, were relevant to the concepts of sustainable development, environment and trade. However, it was felt to be not yet clear whether the existing rules were sufficient and needed simply to be interpreted in order to cover environmental issues, or whether it was necessary to adopt new provisions which would also incorporate the environment dimension.

30. Some delegations observed that the Part IV provisions aimed at improving market access to developing countries' exports, improving the functioning of commodity markets and halting or reversing protectionism to further expand market access, were particularly relevant to the capabilities of developing countries to make a contribution towards sustainable development. These provisions needed only to be implemented without awaiting any renegotiation or interpretation of Part IV. In this context, it was suggested that the possibility of extending the time period for granting GSP treatment to two years be considered. It was also stressed that the concept of special and differential treatment incorporated in Part IV was also implicit in UNCED's recognition that environmental standards valid for developed countries might have unwarranted social and economic costs in developing countries.

31. Others pointed out that while the question of relevance of existing GATT provisions in favour of developing countries to the concepts of sustainable development, environment and trade deserved further consideration, this should first benefit from GATT's general work on the international trading rules. Nevertheless, some believed that discussion on certain aspects of this issue, such as the establishment of special mechanisms, e.g. environmental subsidies and transition periods, to encourage developing countries' participation in multilateral agreements, could begin.

32. Under Section A, the following matters, inter alia, were proposed for future work, although no consensus on them was reached:

(i) a comprehensive examination of the concept of sustainable development with the view to identifying the needs of developing countries in this area;

(ii) examination of the appropriate policies in the area of trade, environment and development necessary to ensure a pattern of growth in developing countries sensitive to the environment;

(iii) examination of specific issues such as: (a) the ways for improving market access of environmentally-friendly products in which developing countries have comparative advantage; (b) barriers to access of environmentally-beneficial products existing in some developing countries; (c) the importance of environmental services and technologies for developing countries; (d) the impact of internal taxes and tariff escalation on commodity trade and granting of a more favourable treatment to environmentally-friendly products with different degrees of processing; (e) ways through which developing countries could take advantage of positive environmental action to increase trade and their access to markets;

(iv) analysis of the possible negative effects of environmental measures on developing countries' exports;

(v) specification of data to be collected and sources to be used in an eventual monitoring exercise and whether it should be effects- or measures-based; and

(vi) examination of the provisions of Article XVIII and Part IV of GATT in order to establish whether existing rules are sufficient and need only be interpreted to cover environmental issues, or whether it would be necessary to adopt new provisions which could incorporate the environmental dimension.

Agenda 21, Chapter 2, Introduction and Section B

33. Discussions have kept abreast of work underway in other international organizations related to making trade and environment policies mutually supportive. The invitation in paragraph 2.1 for States to overcome confrontation and foster a climate of genuine cooperation and solidarity is not new to GATT traditions nor foreign to the discussions in this area that have been characterised by consensus building and open mindedness. Although further work is required before a more comprehensive assessment can be made of progress in this area, some general observations can be made. One is a widely shared view of the basic compatibility of UNCED guiding principles with the underlying philosophy of the GATT.

34. It appears also to be a widely shared view that the original, three-point agenda of the Group on Environmental Measures and International Trade and its work under that agenda anticipated many points of international concern in relation to the trade and environment interface which are included in the UNCED results. These points cover a significant portion, as

delegations have observed, of the detailed recommendations from UNCED, for example paragraphs 2.22(c), relating to transparency; 2.22(f), relating to environmental regulations or standards such as packaging and labelling requirements; and 2.22(j), relating to the relationship between GATT provisions and multilateral environmental agreements. There are also other areas where many delegations have pointed out overlap exists between the UNCED recommendations and the work already underway in the Group. Therefore, many delegations stressed that past deliberations and work by the Group can be considered as efforts already made by GATT as a contribution to UNCED follow-up activities, although there is still work to do on this original agenda.

35. One set of principles to which many delegations have referred favourably as a common basis and point of departure for the work under Section B is contained in paragraph 22(i) of Section B, which states that: "Domestic measures targeted to achieve certain environmental objectives may need trade measures to render them effective. Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply. These could include, inter alia, the principle of non-discrimination; the principle that the trade measure chosen should be the least trade-restrictive necessary to achieve the objectives; an obligation to ensure transparency in the use of trade measures related to the environment and to provide adequate notification of national regulations; and the need to give consideration to the special conditions and developmental requirements of developing countries as they move towards internationally-agreed environmental objectives."

36. Discussions have also pointed to some of the elements warranting further attention, such as 2.21(b), relating to dispute settlement; 2.22(e), relating to the avoidance of using trade restrictions to offset differences in cost arising from differences in environmental standards; 2.22(g), relating to the special factors affecting environment and trade policies in developing countries in the application of environmental standards, as well as in the use of any trade measures; and 2.22(i) which has been referred to in part above but which also states: "Avoid unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country. Environmental measures addressing transborder or global environmental problems should, as far as possible, be based on an international consensus." Many delegations have stated that they endorse this proposition and that they consider that unilateral action of this nature is not allowed under the GATT rules. Several delegations have noted that paragraph 2.22(e) covers a particularly delicate subject warranting careful attention since the use of trade measures to counter notions of "eco-dumping", if legitimised and put into practice, could undermine the very foundations of the international trading system.

37. Other suggestions that have been made by some delegations for further work in the context of UNCED follow-up include clarifying the trade effects of processes and production methods (PPMs)-based environmental measures and exploring their link to the GATT concept of "like product"; examining the potential trade effects of economic instruments such as environmental taxes and subsidies; and the impact of environmental protection on competitiveness.

38. Some of the areas described above are not necessarily viewed as a priority by all delegations. Some have suggested that the work under Section B should first confirm basic principles and recommendations contained in Agenda 21, such as the rejection of extraterritoriality and unilateralism, as the common basis and point of departure for further work in the GATT. Several references have been made to other UNCED concepts and principles and the importance these might have for issues that the Group has been asked to address. Particularly, it has been suggested that the concepts of sustainable development and the need to address specifically the problems of developing countries, where the prescription for achieving sustainable development may be different from that of other countries, should be an important part also of the work in Section B.

39. Some delegations have stressed that work in GATT on UNCED follow-up must proceed in concert with work overall on UNCED follow-up. For example, if general questions related to technology transfer and finance are not adequately addressed in the context of the UNCED follow-up, pressure on the trading system and for unilateral trade action will increase.

Work of the Group on Environmental Measures and International Trade

40. In the discussions on UNCED follow-up, delegations have emphasized that the past work of the Group on its original agenda provides a significant contribution to GATT's UNCED follow-up work. This agenda is comprised of three issues: (i) trade provisions contained in existing multilateral environmental agreements vis-à-vis GATT principles and provisions; (ii) multilateral transparency of national environmental regulations likely to have trade effects; and (iii) trade effects of new packaging and labelling requirements aimed at protecting the environment.

(i) Trade provisions contained in existing multilateral environmental agreements vis-à-vis GATT principles and provisions

41. Governments' efforts to seek co-operative, multilateral solutions to environmental problems of a transboundary or a global nature are very much welcomed by GATT contracting parties, for there are clear grounds for believing that this approach will prove more effective and durable than ad hoc resort to unilateral trade measures to try to deal with such problems. The Group was not requested to conduct an examination of the GATT consistency of trade provisions contained in existing MEAs. No challenge has been brought under the dispute settlement provisions of the GATT against trade measures applied in the context of an MEA. Rather, a forward-looking perspective has been adopted and work has proceeded on a generic basis, which has helped to ensure progress on this agenda item.

42. Discussions in the Group have focused on two areas of possible conflict: the use of trade measures to help protect environmental resources that do not fall within the national jurisdiction of any one or more contracting parties nor necessarily affect solely or directly their own environments, and on trade provisions of MEAs that apply separately to non-parties (i.e. countries not signatories to an MEA who for legitimate or other reasons have decided not to join).

43. Several delegations stressed the need for caution in the negotiation of MEAs before including such trade provisions at all, and feel that it is generally undesirable and not normally necessary for contracting parties to use discriminatory trade restrictions against non-parties to an MEA.

44. A number of delegations expressed views on different approaches for addressing a possible conflict. Some noted that through the waiver provisions contained in Article XXV of the GATT, it is already possible to consider the treatment of trade provisions contained in MEAs on a case-by-case basis should a conflict occur in practice. Among the advantages of this approach, in the view of these delegations, having recourse to a waiver would provide a measured, case-by-case response to any problems that might arise in the future. Under this approach, it could be presumed that if an MEA reflected a genuine multilateral consensus it would find broad support among GATT contracting parties and there need be little, if any, uncertainty about the chances of securing a waiver for it.

45. A second approach that has been suggested is to define conditions for the use of trade measures in the context of an MEA to address transboundary and global environmental problems which, as long as they were met, would ensure that the GATT would accommodate the measures. This approach has been described as creating an "environmental window" in the GATT. One formulation would involve a collective interpretation by GATT contracting parties of the

provisions of Article XX of the GATT in circumstances where trade measures are applied separately in an MEA to non-parties to the MEA.

46. Those delegations favouring this second approach have suggested that it should be based on carefully defined, pre-established criteria that are sufficiently general to cover a broad range of circumstances that may arise in the negotiation of future MEAs while limiting the risk that trade measures in an MEA would be misused for protectionist purposes. This begs a number of issues which have been the subject of preliminary discussion.

47. One issue is what defines an MEA. Within this same context another consideration is the reasons why a non-party to an MEA would have decided not to join the MEA, including the question of who judges the merits of that country's decision to opt out. There may be many reasons why a country decides not to join in multilateral action to address an environmental problem (it may find the scientific evidence not persuasive, it may not be able to afford to join, or it may consider there are more pressing problems that deserve higher priority), and in this regard the reference in Principle 7 of the Rio Declaration to "common but differentiated responsibility" of states in resolving environmental problems of a global nature has been mentioned.

48. Another issue is whether and to what extent a trade measure must be specified in an MEA. In other words, should a "carte blanche" general exception be available in GATT for the use of trade measures in an MEA when a contracting party asserts that the trade measure is linked to and is necessary for it to meet the objectives of the MEA, or should the measures be specifically mandated in the MEA, and if so to what extent?

49. Another issue is the "necessity" of using trade measures in an MEA. This does not refer to whether an MEA itself is necessary, but to the necessity of using trade measures to achieve the objectives of an MEA, in particular discriminatory trade measures. A general rule would seem to be that trade measures might be considered as an accompaniment to environmental policy measures only if the latter do not suffice to realise a specific environmental objective. Beyond that, for some, "necessity" is related to the use of the least trade-restrictive or distorting measure available, or the proportionality of the measure to the need for trade restrictions to ensure the environmental objective is met. It has been pointed out that these concepts are relatively new in the GATT and would need to be further elaborated. Others have emphasised the importance of these concepts, noting that they have been incorporated and endorsed in the Rio Declaration.

50. A related institutional issue that has begun to be discussed but on which the Group has not yet properly focused is dispute settlement. It has been suggested that disputes involving GATT contracting parties could, in theory, be envisaged over the trade provisions contained in an MEA, either between two signatories to the MEA or between a signatory and a non-signatory. In the former case, the dispute could normally be settled under the provisions of the MEA, but the possibility has been raised that one party to the dispute might nevertheless seek recourse to GATT dispute settlement, particularly over the administration or implementation of trade measures which were not specified clearly in the MEA; evidently, if both parties agree to seek recourse to GATT dispute settlement, the provisions of GATT Articles XXII and XXIII are available to them. In the second case involving a non-party to an MEA which could not have access to the dispute settlement mechanism of the MEA, the dispute would have to be raised in GATT.

51. The majority of delegations have yet to elaborate their positions over what, if anything, needs to be done. Most have not yet come out in favour one way or another or taken a firm position, and even those that have indicated their preference have emphasised that they are still open to examining alternative propositions. Many questions remain, and further work needs to be done in analysing the underlying issues before well-informed judgements can be made.

(ii) Multilateral transparency of national environmental regulations likely to have trade effects

52. There appears to be broad agreement on several issues under this agenda item. One is that current GATT provisions (notably Article X, the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, and the transparency provisions of various Tokyo Round Agreements, particularly the Agreement on Technical Barriers to Trade), especially supplemented by the new Uruguay Round provisions, create a broad basis for ensuring multilateral transparency. The GATT regime by and large goes a long way to satisfying the concerns and/or issues raised under this agenda item in respect of measures with significant trade effects.

53. Nevertheless, some delegations have drawn attention to certain environmental measures which they feel may not be covered adequately by these provisions. Of these measures, some delegations have concerns over the adequacy of transparency of economic instruments, measures taken by sub-federal government authorities and by the private sector, and voluntary measures. Other delegations consider that few, if any, of these measures represent gaps in coverage under existing or prospective transparency provisions. They have pointed out the broad scope of GATT Article X, and cautioned against excessive ambition at a detailed level in this area, and particularly against over-extending notification requirements.

54. Effective compliance with these provisions is an essential aspect of ensuring transparency in practice. The new Trade Policies Review Mechanism, agreed to in the Uruguay Round negotiations, involves periodic reviews of the trade policies of each GATT contracting party and is already drawing attention to areas where compliance could be further improved. There appears to be general agreement that transparency requirements in the area of environmental measures should not be more onerous than those in other areas of policy-making that affect trade. Transparency is not an end in itself. It is a means to build confidence in and provide security and stability to the multilateral trading system, to minimise trade restriction and distortion, to assist private sector operators to adjust to changing trade policies, and to prevent trade disputes from arising.

55. There has been considerable discussion regarding the suggestion that governments might consider establishing enquiry points (such as those established under the Agreement on Technical Barriers to Trade) open to all interested parties, public and private, to provide information on trade-related environmental measures, including those not subject to formal notification requirements under the GATT, and on changes in national environmental legislation. It has been suggested that such a system could also assist in increasing the transparency of private schemes (notably environmental labelling) and local and state government programmes. However, some doubts about the practical aspects of implementing enquiry points have been expressed.

(iii) Trade effects of new packaging and labelling requirements aimed at protecting the environment

56. Discussions in the Group have been enriched by the provision by delegations of information that reflects their own national experiences with these measures, both in terms of the environmental objectives that are being pursued and the trade effects that some countries are experiencing. A number of questions about the environmental impact of some forms of packaging and labelling requirements have been raised, in particular those based on PPMs which are not reflected in the characteristics of a product.

57. Discussions have concentrated on trying to identify the trade effects of packaging and labelling requirements and to analyze to what extent they might differ from the trade-related technical regulations and standards that are more familiar to contracting parties. GATT

contracting parties have had considerable experience with the Agreement on Technical Barriers to Trade, which is designed to ensure that technical regulations and standards, including packaging and labelling requirements, do not create unnecessary obstacles to trade.

58. They point also to the significant role that can be played by international standardisation or harmonisation and mutual recognition (acceptance that another country's standards are equivalent even though they are not the same) in reducing technical barriers to trade and tackling the market fragmentation that can result from a great diversity of national standards. They make clear the importance attached to the right to maintain product regulations and standards of national choice when international standards are found to be unsuitable, but also to the obligation to ensure that these do not create unnecessary barriers to trade.

59. The Group has begun to identify generic issues for further analysis, many of which are common to both packaging and labelling requirements. They include: the practical distinction between voluntary and mandatory measures and their implications for trade; approaches to the setting of criteria and threshold levels in the design of the measures; the scope for standardisation or harmonisation and mutual recognition; complications that can arise for trade through the setting of requirements in terms of product PPMs rather than product characteristics; and special difficulties and costs that may face small-size foreign suppliers, in particular from developing countries.

60. On packaging, discussions have focused on the trade effects of two types of packaging requirements: those that stipulate what kinds of packaging can (or cannot) be used in a particular market, and those that prescribe the recovery, re-use, recycling or disposal of packaging once it has served its original purpose. GATT is relatively familiar with the first type. Many technical regulations lay down product characteristics that must be fulfilled if a product is to be assured of market access, and experience gained through the TBT Agreement has permitted a relatively thorough understanding of their potential trade effects. Several delegations have expressed concern over their potential for restricting trade in both packaged goods and packaging material from countries where recycled material is not readily available or is costly, and questioned whether these measures need also be applied to imports, in view of their limited effectiveness in achieving the stated environmental objectives of reducing pressure on waste disposal facilities in the countries imposing them. Doubts have also been expressed by some delegations about using trade measures to reduce the resource-intensity of packaging, because this raises questions about one country imposing its environmental standards on another, and the danger of presuming that the same resource endowments and constraints apply to all countries.

61. GATT is less familiar with the second type of packaging requirement. These are applied not only through technical regulations and standards but also through economic measures such as deposit refund schemes, taxes, charges, and fees for accessing waste handling systems in the country of destination. Further case-by-case examination of different measures and their trade effects seems needed.

62. A second theme relates to the observation that since domestically produced goods usually generate the most important proportion of local packaging waste, it is natural for packaging requirements to be chosen and formulated with the most common forms of domestically generated packaging waste and with domestic waste disposal facilities and priorities in mind. At the same time, in many cases it is foreign suppliers, facing the longest transport distances to markets, who need to use the most packaging per unit of product supplied. Some of the most significant trade effects can therefore occur where appropriate disposal facilities are not available, or are available only at high cost, for the kinds of packaging favoured (among other things, use of natural products on environmental grounds over artificially manufactured products) by foreign suppliers, especially small suppliers and those from developing countries for whom the costs of adapting to

diverse packaging requirements in their overseas markets can be the most burdensome. In such cases, market access opportunities can be very seriously impaired.

63. Requiring suppliers to recover their packaging waste from overseas markets is not considered in most instances a commercially viable option and it could lead to economic inefficiency. Exports may be affected because smaller industries cannot afford the costs associated with take-back requirements or with the necessary adjustments in the packaging materials. Possible harmonisation of packaging among countries has been discussed, and it has been noted that this might be valuable, particularly if operated within a system of mutual recognition, in reducing the trade effects caused by the diversity of different packaging requirements in different overseas markets. However, this is not seen as a panacea for all the potential trade problems in this area.

64. The trade effects arising from waste recycling and final disposal schemes may be influenced by: the extent to which responsibility for defining the criteria governing the schemes is delegated to domestic industry groups and tailored to domestic industry preferences; effective access for foreign suppliers to ensure their trade concerns are taken into account at the stage of design and preparation of the schemes; the extent to which packaging favoured by overseas suppliers is accepted by the schemes; costs of participation in the schemes; the availability of adequate information for foreign suppliers on schemes in effect; and the provision of adequate advance notification to foreign suppliers of new schemes or changes in existing ones.

65. A point subject to preliminary discussions is whether and how these types of packaging requirements might be covered by existing GATT provisions. Some doubts have been expressed about whether recovery, re-use or recycling requirements fall within the definition of measures covered by the TBT Agreement, and questions have been raised about how deposit refund schemes and disposal taxes, charges and fees might be treated in GATT terms.

66. On labelling, delegations recalled that UNCED recognized the potential usefulness of labelling requirements aimed at protecting the environment (eco-labelling) in terms of providing information that can assist consumers to make environmentally-sound purchasing decisions. The majority of the eco-labelling schemes examined in the Group are voluntary in nature. While not mandatory, since they are designed to differentiate products on the basis of their environmental characteristics, they can have a major influence on conditions of competition in a market.

67. As in the case of packaging requirements, many delegations have emphasised the importance of the transparency of eco-labelling schemes for overseas suppliers and of adequate time allowed for foreign suppliers to adjust. An unlabelled product, whether tested or not, may face a market disadvantage by conveying the impression that it has environmental shortcomings. Attention has therefore focused on effective access for foreign suppliers to domestic labelling schemes, namely having the opportunity to participate and raise their trade concerns, as necessary, in the process through which product criteria and threshold levels for awarding eco-labels are decided, and their products having access to certification systems and the awarding of labels on the same terms as domestically produced goods.

68. The choice of products to be labelled and the criteria that a product must meet to obtain an eco-label normally reflect local environmental conditions, such as resource constraints and local preferences for specific environmental product attributes, which may prove difficult for foreign producers to meet or result in overlooking positive environmental qualities of imported products. Local industry influence in the choice of products or criteria should not result in inadvertent protective consequences, and the importance of basing the criteria on sound scientific evidence has been stressed. Some saw a need for a greater role for public authorities in certain aspects of the process of developing and granting eco-labels.

69. Life-cycle analyses of a product's environmental qualities are increasingly being used in eco-labelling schemes, although in practice these may tend to highlight only a few of a product's environmental attributes. The choice made will inevitably involve value judgements; for this reason the desirability of providing foreign suppliers access at the design stage of the scheme to allow their trade concerns to be taken into account was stressed. Eco-labelling criteria based on PPMs may prove particularly difficult, and even environmentally inappropriate, for overseas suppliers to meet.

70. Foreign suppliers' access to an eco-label may be restricted if their own preferred PPMs do not coincide with those required in the overseas market, or if meeting foreign process standards involves substantial cost. Criteria based on PPMs may also require that confidential business information be disclosed in order to gain an eco-label. Concerns have been registered that specifying trade restrictions in terms of PPMs can amount to exporting domestic environmental standards. However, in the view of some delegations, if an eco-label is awarded on the basis of life-cycle analysis of the environmental impact of a product, it seems inevitable to them that it will need to take the environmental impact of the PPMs used into account, no matter where their environmental effect. Attention has also been called to the special problems that developing countries may face. In particular, it has been suggested that they may use very different PPMs from those considered acceptable in their main markets for gaining an eco-label, and they may lack the capital and the technology to adapt their PPMs accordingly.

71. Diversity of eco-labelling schemes in different markets, and the problems that this can cause for all multi-market suppliers, especially those of relatively small size, were raised. Doubts were expressed as to whether standardisation has an effective role in reducing this diversity: it is probably neither desirable nor possible to try to standardise differences in environmental conditions, tastes and priorities in different countries. More potential was seen for harmonisation and mutual recognition of criteria used to award eco-labels and of the eco-labels themselves.

The Decision on Trade and Environment

72. At the meeting held to adopt the Final Act of the Uruguay Round negotiations on 15 December 1993, the Trade Negotiations Committee, which oversees all activities related to the Uruguay Round negotiations, adopted a Decision on Trade and Environment. The Decision notes the results of the UNCED and its follow-up in GATT, as well as the work of the Group on Environmental Measures and International Trade, and of the Committee on Trade and Development; the work programme envisaged in the Decision concerning Article XIV of the Services Agreement; and the relevant provisions of the TRIPs Agreement. Considering that there should not be, nor need be, any policy contradiction between an open, non-discriminatory and equitable multilateral trading system and protection of the environment, and desiring to coordinate trade and environment policies, without exceeding the competence of the multilateral trading system, the Decision commits contracting parties to drawing up a programme of work in this area.

73. Consultations are now taking place to elaborate this work programme. It will build on the work that has already taken place in GATT over the past two years, particularly in the Group on Environmental Measures and International Trade, and extend into new areas of trade that will be covered by the rules of the World Trade Organization. Consultations are also addressing the question of what institutional structure should be put in place to undertake the work programme. The Trade Negotiations Committee will present this programme of work and recommendations on an institutional structure for adoption at the Ministerial Conference of April 1994.

Transparency

74. In order to contribute to further awareness of the discussions in GATT on trade and environment and help promote a dialogue between trade, development and environment communities, the Director-General of the GATT is planning to host a symposium of environment and trade experts in early summer of 1994. It is expected that this will provide for further exchange of views on questions of policy coordination, effective rules, and other technical, legal, and institutional issues that arise from the interface of trade and environmental policies.

75. The GATT CONTRACTING PARTIES have agreed to derestrict the documents prepared by the GATT secretariat for the Group on Environmental Measures and International Trade. These documents were prepared in order to assist the Group in its examination of the three items on its agenda. The contracting parties have also agreed to derestrict the reports by the Chairmen of the Committee on Trade and Development and the Group on Environmental Measures and International Trade describing the work undertaken in these fora and the progress achieved. This documentation, which is available from the GATT secretariat, is listed and described in the appendix below.

76. The GATT Council held an exchange of views on the UNCED recommendations contained in Agenda 21, Chapter 2, paragraphs 2.22 (a), (b), (h) and (k) at its meeting devoted to UNCED follow-up on 22 February 1994. While stressing the preliminary nature of this exchange, some delegations considered that non-governmental organizations had their strongest comparative advantage in terms of influencing the process at the national level, where governments should encourage and promote dialogue, cooperation and interaction with them. Many delegations considered that informal arrangements with non-governmental organizations should be fostered through the GATT secretariat which could facilitate transparency and ensure a two-way flow of information. Delegations noted the importance of the secretariat continuing the initiatives already taken towards maintaining and promoting dialogue with development and environment communities, including the newsletters circulated by the secretariat on the environmental activities of the GATT, and delegations welcomed the initiative of the Director-General to host a symposium on trade and environment in the early summer of 1994.

77. Delegations agreed that GATT had an important role to play in the trade and environment debate and that it should be involved in all areas within its competence. GATT had already taken steps to ensure cooperation with other relevant intergovernmental organizations by providing for their observership in the meetings of the Group on Environmental Measures and International Trade and in the Council discussion on UNCED follow-up, and by the secretariat participating, as an observer, in the relevant meetings of these organizations. The boundaries of GATT's competence in this area must be clearly maintained so that effective and useful cooperative relationships can continue to develop with other international organizations, such as the United Nations Environment Programme, the United Nations Committee on Trade and Development and the Commission on Sustainable Development.

Appendix

1. The following documents, prepared for the Group on Environmental Measures and International Trade, were derestricted on 25 January 1994:

TRE/W/1/Rev.1 - Describes and reviews the specific trade provisions contained in 18 multilateral environmental agreements

TRE/W/2 - Summarises issues raised in the course of the Group's discussions on the multilateral transparency of national environmental regulations

TRE/W/3, and Add.1 and Add.2 - A generic summary of packaging and labelling requirements based on publicly available information and information submitted to the secretariat by delegations

TRE/W/4 - A generic description of environmental policy instruments to supplement information contained in TRE/W/2

TRE/W/7 - Generic list of national environmental regulations likely to have trade effects that may not be covered adequately or at all by GATT transparency provisions

TRE/W/9 - Trade effects and concerns that could arise from new forms of packaging requirements

TRE/W/10/Rev.1 - Notification requirements that exist in multilateral environmental agreements

TRE/W/12 - Trade effects and concerns that could arise from new forms of labelling requirements

TRE/W/13 - Outline analysis of the trade effects of various environmental measures

TRE/W/14 - Report on the results of the first session of the Commission on Sustainable Development

TRE/W/16/Rev. 1 - Review of the use in GATT of the concepts of "least trade-restrictive" and "proportionality"

TRE/W/17/Rev.1 - Description of the negotiating history of GATT Article XX(h) and its application

TRE/W/18 - Description of the application of GATT Article XXV:5 and of the potential of its existing provisions

2. Also derestricted are the two progress reports by the Chairmen of the Group on Environmental Measures and International Trade and the Committee on Trade and Development:

L/7402 - Report by the Chairman of the Group on Environmental Measures and International Trade, to the 49th Session of the CONTRACTING PARTIES

COM.TD/W/509 - Report by the Chairman of the Committee on Trade and Development on its UNCED follow-up work.

3. The following three documents on environmental issues had already been derestricted:

L/6896 - Factual note describing the establishment of the Group on Environmental Measures and International Trade in 1971, information on other work in GATT on environmental issues, and description of the trade provisions of various multilateral environmental agreements and related GATT provisions

L/6892/Add.3 - Report by the Secretariat to GATT Contracting Parties on the UNCED results that relate to trade.

"International Trade", 1990-91, Volume 1, Chapter 2. Commentary by the GATT Secretariat, on its own responsibility, on the trade and environment links.